

## **REMARKS**

Claims 1-3, 6-16, and 18-24 are pending in the present application.

In the Office Action, claims 1 and 15 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by the ETSI publication. Claims 2-3, 6, 14, 16, and 18-24 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the ETSI publication in view of Koulakiotis, et al. (U.S. Patent Application Publication No. 2003/0104801). The Examiner's rejections are respectfully traversed.

The ETSI publication describes a multicast mode that allows unidirectional point-to-multipoint transmission of multimedia data from a single source point to a multicast group in a multicast area. See §4.2 of the ETSI publication. Users can subscribe to a multicast subscription group and may then discover active or future multicast services. A Home Environment can also join the user to the selected multicast group if the user has previously subscribed to this multicast group. See §4.2.1 of the ETSI publication. The Home Environment broadcasts multicast services to measurement areas, which may be determined based on multicast group members being present in the multicast area. See §5.2.1 of the ETSI publication.

However, the ETSI publication also fails to teach or suggest assigning at least one service rate to at least one of a plurality of subscription-based service types in response to at least one of the determined geographical distribution and the determined subscription distribution, as set forth in independent claim 1. The ETSI publication also fails to teach or suggest receiving a subscription-based service at an assigned service rate, the assigned service rate corresponding to at least one of a determined geographical distribution of a number of multicast service subscribers and a determined subscription distribution of the number of multicast service subscribers within the cell, as set forth in independent claim 15.

For at least the aforementioned reasons, Applicant respectfully submits that claims 1 and 15 are not anticipated by the ETSI publication and requests that the Examiner's rejections of claims 1 and 15 under 35 U.S.C. § 102(e) be withdrawn.

Moreover, it is respectfully submitted that the pending claims are not obvious in view of the ETSI publication and Koulakiotis. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, the ETSI publication does not teach or suggest assigning at least one service rate to at least one of a plurality of subscription-based service types in response to at least one of the determined geographical distribution and the determined subscription distribution, as set forth in independent claim 1. The ETSI publication also fails to teach or suggest receiving a subscription-based service at an assigned service rate, the assigned service rate corresponding to at least one of a determined geographical distribution of a number of multicast service subscribers and a determined subscription distribution of the number of multicast service subscribers within the cell, as set forth in independent claim 15.

The Examiner relies upon Koulakiotis to describe various aspects of multicasting. However, Koulakiotis fails to remedy the aforementioned fundamental deficiencies of the ETSI publication. Applicant therefore respectfully submits that the cited references fail to teach or suggest all the limitations set forth in pending claims. Furthermore, the cited references fail to provide any suggestion or motivation to modify the prior art of record to arrive at the claimed invention. To the contrary, the ETSI publication is only concerned with locating multicast group members within multicast areas. Accordingly, the ETSI publication provides no suggestion or

motivation for determining the number or geographical distribution of service subscribers and for using this information to determine service rates.

For at least the aforementioned reasons, Applicant respectfully submits that the pending claims are not obvious over the prior art of record and requests that the Examiner's rejections of claims 2-3, 6, 14, 16, and 18-24 under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, the Examiner indicated that claims 7-13 include allowable subject matter. Claim 7 has been rewritten in independent form including all the limitations of the base claim and any intervening claims. Thus, Applicant respectfully submit that claims 7-13 are in condition for allowance.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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